

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CURTIS and CHARLOTTE WESTLEY,  
Individually and on Behalf of All Others  
Similarly Situated,

Case No. C11-2448-EMC (NC)  
and related consolidated action

## Plaintiffs.

**[PROPOSED] ORDER GRANTING  
DEFENDANTS' MOTION TO DISMISS  
THE THIRD AMENDED COMPLAINT  
FOR VIOLATION OF THE FEDERAL  
SECURITIES LAWS**

OCLARO, INC., et al.,

## Defendants.

IN RE OCLARO, INC. DERIVATIVE  
LITIGATION

Lead Case No. C11-3176-EMC (NC)  
(Derivative Action)

### This Document Relates to:

Date: May 16, 2013

Time: 1:30 p.m.

Courtroom: 5, 17th Floor

Judge: Hon. Edward M. Chen

## [PROPOSED] ORDER

Defendants Oclaro, Inc., Alain Couder, Jerry Turin, and James Haynes have moved the Court, pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, and the Private Securities Litigation Reform Act of 1995, codified in relevant part at 15 U.S.C. § 78u-4 (2010), *et seq.* (“PSLRA”), to dismiss with prejudice all allegations asserted against them in the Third Amended Complaint for Violation of the Federal Securities Laws (the “Third Amended Complaint”), filed by Lead Plaintiff on March 1, 2013, relating to statements alleged to have been made in July and August 2010. Defendants have also requested that the Court dismiss with prejudice all claims in the Third Amended Complaint asserted against defendant James Haynes. Defendants have further requested that the Court, pursuant to Rule 201 of the Federal Rules of Evidence, take judicial notice of the documents attached to the Declaration of Andrew T. Sumner (the “Sumner Declaration”) as Exhibits 4 through 7.

Defendants' Motion to Dismiss the Third Amended Complaint for Violation of the Federal Securities Laws ("Motion to Dismiss") and Request for Judicial Notice were heard on May 16, 2013 at 1:30 P.M. Having considered the parties' papers, oral argument, and other pleadings and papers filed herein, the Court orders as follows:

1. Judicial notice of the documents attached to the Sumner Declaration as Exhibits 4 through 7 is appropriate under Federal Rule of Evidence 201;

2. The Third Amended Complaint fails to allege a strong inference of scienter, as required under Rule 9(b) and the PSLRA, as to any defendant with respect to statements alleged to have been made in July and August 2010;

3. The Third Amended Complaint fails to assert any claim against James Haynes; and

4. Accordingly, the Third Amended Complaint fails to state a claim under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 or any other claim upon which relief may be granted with respect to: (i) statements alleged to have been made in July and August 2010; and (ii) James Haynes.

**WHEREFORE, IT IS HEREBY ORDERED** that defendants' Request for Judicial Notice is **GRANTED**. **IT IS FURTHER ORDERED** that defendants' Motion to Dismiss is **GRANTED**. The Third Amended Complaint's allegations with respect to statements alleged to have been made in July and August 2010 are hereby **DISMISSED WITH PREJUDICE**. The Third Amended Complaint's claims against James Haynes are hereby **DISMISSED WITH PREJUDICE**.

## IT IS SO ORDERED.

DATED: \_\_\_\_\_

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Hon. Edward M. Chen  
United States District Court Judge

Respectfully submitted:

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